



DEFENSE LOGISTICS AGENCY
THE DEFENSE CONTRACT MANAGEMENT COMMAND
8725 JOHN J. KINGMAN ROAD, SUITE 2533
FT. BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO

AQOE

August 26, 1996

MEMORANDUM FOR COMMANDERS, DEFENSE CONTRACT MANAGEMENT
DISTRICTS

SUBJECT: DCMC Memorandum No. 96-42, Extension of Class Deviation - Interim
Payment and Contract Closeout (INFORMATION)

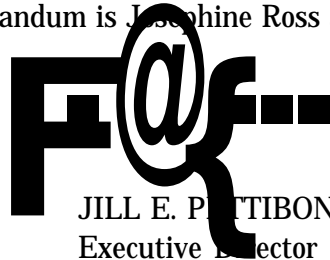
This is an INFORMATION memorandum effective for a one year period ending July 31, 1997, or until the FAR is revised, whichever occurs first. Target Audience: Contracting Officers, Price Analysts and Cost Monitors.

The Director, Defense Procurement issued the attached memorandum, dated July 12, 1996, which amends the FAR to allow greater use of quick closeout procedures and to make interim payments to the contractor under specified circumstances. This authority provides contracting officers the opportunity to increase their contract closeout rate and facilitates earlier release of funds to the contractor. The FAR changes are summarized as follows:

- a. FAR 42.704 has been changed by adding a new subparagraph (e) which permits the contractor to use, as his billing rates, the same rates submitted in his certified final indirect cost rate proposal. However, the billing rates must be adjusted for historical unallowable and can only be used until the certified final indirect cost rate proposal has been audited and settled.
- b. FAR 42.708(a) has been changed to "The contracting officer responsible for contract closeout shall [not may] negotiate the settlement of indirect costs for a specific contract, in advance of the determination of final indirect cost rates, if.. ." the criteria for quick closeout, as amended by the attached memorandum, are otherwise met.
- c. FAR 4 1.708(a)(2)(i) has been changed by raising the threshold for total unsettled indirect costs allocable to any one contract to \$1,000,000.
- d. FAR 42.708 (a)(2)(ii) has been changed to allow contracting officers to waive the 15% restriction on rate settlements based on a risk assessment that addresses specific criteria.
- e. FAR Clause 52.216-7 and -13 has been changed by adding a new subparagraph (4) which requires the contractor to submit his final completion invoice or voucher within 120 days after settlement of the final indirect cost rates.

f. FAR Clauses 52.216-8(b), 52.216-9(c) and 52.216-1 O(c) are changed to require the contracting officer to release 75% of all fee withholds after receipt of the certified final indirect cost rate proposal covering the year of physical completion of the contract, provided the contractor satisfies all other requirements of this clause.

Point of contact for this memorandum is Josephine Ross at (703) 767-3442.



JILL E. PRATTIBONE
Executive Director
Contract Management Policy

Attachment



ACQUISITION AND
TECHNOLOGY
DP (DAR)

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

July 12, 1996

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In reply refer to
DAR Tracking Number: 96-00004

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION POLICY, INTEGRITY, AND
ACCOUNTABILITY, ASN(RD&A)/API&A
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RDw)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Extension of Class Deviation--Interim Payments and Contract
Closeout

I extend the authority for all military departments and defense agencies to use the attached text and clauses which provide for increased use of quick contract closeout procedures and interim payments to contractors under certain circumstances.

FAR 42.704 is amended to permit, with certain restrictions, contractor use of billing rates contained in certified final indirect cost rate proposals. The FAR 42.708(a) (2) (i) threshold for total unsettled indirect costs allocable to any one contract is raised from \$500,000 to \$1 million. The FAR 42.708(a) (2) (ii) threshold is revised to permit waiver of the 15 percent restriction on contracting officer rate settlement based upon a risk assessment. The clauses at 52.216-7 and -13 are revised to establish a timeframe for contractor submission of final vouchers. The clauses at 52.216-8, -9, and -10 are revised to require release of 75 percent of all fee withholds under physically completed cost-type contracts, and to permit release of 90 percent of all withholds in certain circumstances.

I am extending the class deviation for a one-year period ending July 31, 1997, or until the FAR is revised, whichever occurs first.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc : DSMC, Ft. Belvoir



FAR Text and Clauses

PART 42 CONTRACT ADMINISTRATION

* * * * *

SUBPART 42.7 -- INDIRECT COST RATES

* * * * *

42.704 Billing rates.

(a) - (d) * * *

t(e) When the contractor provides to the cognizant contracting officer the certified final indirect cost rate proposal in accordance with 42.705-1(b) or 42.705-2(b), the contractor may bill the proposed indirect cost rates (adjusted for any historical disallowed amounts found in prior years' final indirect cost rate proposals), until the proposal has been audited and settled.]

* * * * *

42.705 Final indirect cost rates.

[(a)] Final indirect cost rates shall be established on the basis of (a[1]) contracting officer determination procedure (see 42.705-1) or (kt21) auditor determination procedure (See 42.705²)

[(b) Within 120 days after settlement of the final indirect cost rates, the contractor shall submit a completion invoice or voucher reflecting the settled amounts and rates on all contracts physically completed in the year covered by the proposal.]

42.708 Quick-closeout procedures.

(a) The contracting officer responsible for contract closeout may shall negotiate the settlement of indirect costs for a specific contract, in advance of the determination of final indirect cost rates, if--

(1) No Change

(2) The amount of unsettled indirect cost to be allocated to the contract is relatively insignificant. Indirect cost amounts will be considered insignificant when--

(i) The total unsettled indirect cost applicable [to be allocated] to any one contract does not exceed \$500,000³ [to be allocated] to any one contract does not exceed \$500,000; and

(ii) Unless otherwise provided in agency procedures, the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs allocable to cost-type

contracts for that fiscal year. [The contracting officer may waive the 15 percent restriction based upon risk assessment that considers contractor's accounting~ estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information] ; and
* * * * *

PART 52 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

SUBPART 52.2--TEXTS -O-F PROVISIONS AND CLAUSES

* * * * *

52.216-7 Allowable Cost and Payment

* * * * *

ALLOWABLE COST AND PAYMENT (JUL 1991) (DEVIATION)

* * * * *

(d) *Final indirect cost rates.*

(1) * * *

(2) * * *

(3) * * *

(4) [Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(5) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

● * * * *

(f) Quick-closeout procedures. ~~When the Contractor and Contracting Officer agree, the quick closeout procedures of Subpart 42.7 of the FAR may be used.~~ [Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.]

* * * * *

(h) Final payment.

(1) ~~= Contractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of~~

~ [a completion] invoice or voucher [submitted by the Contractor in accordance with (d) (4)1, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

* * * * *

52.216-8 Fixed Fee.

* * * * *

FIXED FEE (APR 1984) (DEVIATION)

*** * * -

(b) * * * [The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions~ including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.]

* * * * *

52.216-9 Fixed Fee - Construction.

* * * * *

FIXED FEE - CONSTRUCTION (APR 1984) (DEVIATION)

* * * * *

(c) * * * [The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions~ including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.]

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52.216-10 Incentive Fee.

* * * * *

INCENTIVE FEE (APR 1984) (DEVIATION)

* * * * *

(c) *Withholding of paymnt.* * * * [The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor Has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on *prior* years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.]

* * * * *

52.216-13 Allowable Cost and Payment-Facilities

* * * * *

ALLOWABLE COST AND PAYMENT - Facilities (FEB 1995) (DEVIATION)

* * * * *

(c) *Negotiated indirect costs.* * * *

(1) * * *

(2) * * *

(3) * * *

(4) [Within 120 days after settlement of the final indirect cost rate covering the year in which this contract is physically complete, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(5)] Failure by the parties "to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

* * * * *

(e) Quick-closeout procedures. ~
~~Contracting Officer agree, the quick-closeout procedures of Subpart~~
~~42.7 of the FAR [Quick-closeout procedures are~~
applicable when the conditions in FAR 42.708(a) are satisfied.]

* * * * *

Alternate I (APR 1984) (DEVIATION)

* * * * *

(h) Final payment.

(1) ~~The Contractor shall submit a completion invoice or~~
~~voucher designated as such, promptly upon completion of the work,~~
~~but no later than one year (or longer, as the Contracting Officer~~
~~may approve, on the completion of the work.)~~ Upon approval of
[a completion] invoice or voucher [submitted by the Contractor
in accordance with (c) (4)1, and upon the Contractor's compliance
with all terms of this contract, the Government shall promptly pay
any balance of allowable costs not previously paid.